



0000122599

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 10 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
STRAWBERRY WATER CO., INC. FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-03513A-01-0727

DECISION NO. 67167**OPINION AND ORDER**

DATE OF HEARING:

December 10, 2002; May 13, 2004

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

APPEARANCES:

Robert T. Hardcastle, on behalf of Strawberry Water Co., Inc.

Richard E. Henry, on behalf of Hardscrabble Mesa Homeowners Association; and

Lisa A. Vandenberg and Jason Gellman, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 13, 2001 Strawberry Water Co., Inc. ("Strawberry Water" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("CC&N") to include the Hardscrabble Mesa subdivision and the existing supply locations within the Company's CC&N in Gila County, Arizona.

On October 3, 2001, the Commission's Utilities Division Staff ("Staff") filed a Non-Sufficiency letter indicating that Strawberry Water had not met the sufficiency requirements as set forth in A.A.C. R14-2-602(A)(2).

On October 16, 2001, the Company filed an amended legal description of the requested CC&N extension area.

On May 1, 2002, Staff filed its Staff Report in this matter recommending approval of the

1 application subject to certain conditions.

2 By Procedural Order issued May 16, 2002, a hearing in this matter was scheduled for August
3 6, 2002 and Strawberry Water was ordered to publish notice of the application in accordance with the
4 Procedural Order.

5 On August 5, 2002, Robert Hardcastle, President of Brooke Utilities, Inc. (Strawberry Water's
6 parent company), notified the Commission that the notice ordered by the May 16, 2002 Procedural
7 Order had inadvertently not been made. The hearing was therefore postponed. On September 6,
8 2002, Mr. Hardcastle submitted a letter requesting that the hearing be rescheduled.

9 On September 24, 2002, a Procedural Order was issued rescheduling the hearing for
10 December 10, 2002 and directing the Company to publish notice of the application and the hearing
11 date and to mail to each of the residents in the Hardscrabble Mesa subdivision a copy of the notice.

12 The hearing was held as scheduled on December 10, 2002. At the conclusion of the hearing,
13 Strawberry Water was directed to submit certain late-filed information, including a main extension
14 agreement between the Company and the Hardscrabble Mesa Homeowners Association
15 ("HMHOA").

16 On January 13, 2003, Strawberry Water filed, among other things, a proposed Water Facilities
17 Agreement between the Company and the HMHOA along with a request that Staff review and
18 approve the proposed agreement.

19 On January 17, 2003, Staff filed Comments regarding Strawberry Water's filing. In its
20 Comments, Staff stated that the agreement submitted by the Company did not comply with A.A.C.
21 R14-2-406(D), because the agreement did not provide for the required minimum refund of ten
22 percent over ten years of the total revenue received from the water sales connected to the main
23 extension for the Hardscrabble Mesa area.

24 On March 3, 2003, Strawberry Water filed an executed copy of a revised Water Facilities
25 Agreement between the Company and the HMHOA. The revised agreement provided, among other
26 things, that the HMHOA waived its right to any refunds notwithstanding the requirements of A.A.C.
27 R14-2-406(D).

28 On March 10, 2003, Staff filed Additional Comments regarding the Company's proposed

1 agreement with the HMHOA. Staff reiterated that the agreement suffered from the same deficiencies
2 previously identified in the prior Comments because the agreement did not provide for the required
3 minimum ten percent refund over ten years in accordance with Commission rules. Staff stated that it
4 could not approve the proposed agreement and recommended that the Company file an agreement in
5 compliance with all applicable state regulations.

6 No additional documents were filed in this docket until January 13, 2004, when Staff filed a
7 Motion for Administrative Closure. Staff claimed that it had attempted to work with Strawberry
8 Water regarding an acceptable main extension agreement but the Company had failed to submit an
9 agreement that complied with Commission regulations. Staff therefore requested that the docket be
10 administratively closed.

11 On January 30, 2004, the president of the HMHOA filed a letter opposing Staff's request for
12 administrative closure of the docket. The HMHOA's letter stated that Strawberry Water and the
13 HMHOA had adjusted the agreement to fulfill the Commission's requirements. The letter also
14 claimed that the HMHOA depends on Strawberry Water for water service and that the HMHOA has
15 no other options for service.

16 On April 14, 2004, a Procedural Order was issued setting a hearing for May 13, 2004, and
17 directing Staff and the Company to attempt to resolve the ongoing dispute regarding the terms of the
18 proposed main extension agreement.

19 The hearing was held as scheduled on May 13, 2004. At the conclusion of the hearing,
20 Strawberry Water was ordered to file, by no later than May 21, 2004, various documents requested by
21 Staff, including an Arizona Department of Environmental Quality ("ADEQ") compliance report, a
22 current water use data sheet, evidence related to ADEQ's approval to construct the Hardscrabble
23 Mesa water system facilities, and a revised main extension agreement. Staff was directed to respond
24 to the Company's filing by no later than May 28, 2004.

25 On May 20, 2004, Strawberry Water filed a letter indicating that all of the required filings had
26 been made by the Company and that the revised Water Facilities Agreement with the HMHOA had
27 been sent to the HMHOA for signature.

28 On May 24, 2004, a revised executed Water Facilities Agreement between Strawberry Water

1 and the HMHOA was filed in this docket as well as a document titled HMHOA Water System
2 Valuation; the ADEQ Approval of Construction of the system; and a Water Use Data Sheet for
3 Strawberry Water.

4 On June 4, 2004, Staff filed Comments regarding the revised Water Facilities Agreement filed
5 on May 24, 2004. In its Comments, Staff stated that it now recommends approval of the May 24,
6 2004 Water Facilities Agreement and of Strawberry Water's request for extension of its CC&N to the
7 Hardscrabble Mesa subdivision.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. Strawberry Water is an Arizona corporation engaged in providing water utility service
13 to approximately 983 customers within Gila County, Arizona.

14 2. Strawberry Water is a wholly owned subsidiary of Brooke Utilities, Inc., which has its
15 headquarters in Bakersfield, California.

16 3. E&R Water Company, Inc. ("E&R") previously controlled the CC&N now operated
17 by Strawberry Water. E&R's CC&N was originally obtained in Decision No. 30820 (March 20,
18 1958), but was subsequently transferred to Strawberry Water.

19 4. Strawberry Water's current rates and charges were authorized for E&R in Decision
20 No. 62400 (March 31, 2000). During the course of the hearing in that proceeding, Staff discovered
21 that E&R was providing service to the Hardscrabble Mesa subdivision, which was outside of E&R's
22 (now Strawberry Water's) certificated area¹. As a result, E&R was directed to file an application for
23 an extension of its CC&N to include the Hardscrabble Mesa subdivision (Decision No. 62400, at 7-
24 8).

25 _____
26 ¹ According to the president of the HMHOA, Richard Henry, the homeowners association constructed the water system
27 that serves the Hardscrabble Mesa subdivision in the late 1980s. According to Mr. Henry, the former owner of the E&R
28 system supplied the HMHOA with water under a temporary arrangement and applied for a CC&N extension in 1988.
However, the application process was apparently never completed, although the HMHOA continued to receive water
service from E&R, and now Strawberry Water, despite the lack of a CC&N to serve the Hardscrabble Mesa area (May 13,
2004 Tr. 5-8, 32-34).

1 5. On September 13, 2001, Strawberry Water filed with the Commission an application
2 for an extension of its CC&N to include the Hardscrabble Mesa subdivision.

3 6. On October 3, 2001, Staff filed a Non-Sufficiency letter indicating that Strawberry
4 Water had not met the sufficiency requirements as set forth in A.A.C. R14-2-602(A)(2).

5 7. On October 16, 2001, the Company filed an amended legal description of the
6 requested CC&N extension area.

7 8. On May 1, 2002, Staff filed its Staff Report in this matter recommending approval of
8 the application following a hearing.

9 9. By Procedural Order issued May 16, 2002, a hearing in this matter was scheduled for
10 August 6, 2002 and Strawberry Water was ordered to publish notice of the application in accordance
11 with the Procedural Order. The hearing date was postponed at Strawberry Water's request because
12 the Company had inadvertently failed to publish notice of the application and the hearing.

13 10. On September 24, 2002, a Procedural Order was issued rescheduling the hearing for
14 December 10, 2002 and directing the Company to publish notice of the application and the hearing
15 date and to mail to each of the residents in the Hardscrabble Mesa subdivision a copy of the notice.
16 Affidavits of publication of the notice were filed by the Company on October 23, 2002.

17 11. The hearing was held as scheduled on December 10, 2002. At the conclusion of the
18 hearing, Strawberry Water was directed to submit certain late-filed information, including a revised
19 main extension agreement between the Company and the Hardscrabble Mesa Homeowners
20 Association.

21 12. On January 13, 2003, Strawberry Water filed, among other things, a proposed Water
22 Facilities Agreement between the Company and the HMHOA along with a request that Staff review
23 and approve the proposed agreement.

24 13. On January 17, 2003, Staff filed Comments regarding Strawberry Water's filing. In
25 its Comments, Staff stated that the agreement submitted by the Company did not comply with A.A.C.
26 R14-2-406(D), because the agreement did not provide for the required minimum refund of ten
27 percent over ten years of the total revenue received from the water sales connected to the main
28 extension.

1 14. On March 3, 2003, Strawberry Water filed an executed copy of a revised Water
2 Facilities Agreement between the Company and the HMHOA. The executed agreement provided,
3 among other things, that the HMHOA waived its right to any refunds notwithstanding the
4 requirements of A.A.C. R14-2-406(D).

5 15. On March 10, 2003, Staff filed Additional Comments regarding the Company's
6 proposed agreement with the HMHOA. Staff reiterated that the agreement suffered from the same
7 deficiencies previously identified in the prior Comments because the agreement did not provide for
8 the required minimum ten percent refund over ten years in accordance with Commission rules. Staff
9 stated that it could not approve the proposed agreement and recommended that the Company file an
10 agreement in compliance with all applicable state regulations.

11 16. On January 13, 2004, Staff filed a Motion for Administrative Closure. Staff claimed
12 that it had attempted to work with Strawberry Water regarding an acceptable main extension
13 agreement but the Company had failed to submit an agreement that complied with Commission
14 regulations. Staff therefore requested that the docket be administratively closed.

15 17. On January 30, 2004, the president of the HMHOA filed a letter opposing Staff's
16 request for administrative closure of the docket. The HMHOA's letter stated that Strawberry Water
17 and the HMHOA had adjusted the Water Facilities Agreement to fulfill the Commission's
18 requirements. The letter also claimed that the HMHOA depends on Strawberry Water for Water
19 service and that the HMHOA has no other options for service.

20 18. On April 14, 2004, a Procedural Order was issued setting a hearing for May 13, 2004,
21 and directing Staff and the Company to attempt to resolve the ongoing dispute regarding the terms of
22 the proposed main extension agreement.

23 19. The hearing was held as scheduled on May 13, 2004. At the conclusion of the
24 hearing, Strawberry Water was ordered to file, by no later than May 21, 2004, various documents
25 requested by Staff, including an ADEQ compliance report, a current water use data sheet, evidence
26 related to ADEQ's approval to construct the Hardscrabble Mesa water system facilities, and a revised
27 main extension agreement.

28 20. On May 24, 2004, a revised executed Water Facilities Agreement between Strawberry

1 Water and the HMHOA was filed in this docket, as well as a document titled HMHOA Water System
2 Valuation; the ADEQ Approval of Construction of the system; and a Water Use Data Sheet for
3 Strawberry Water.

4 21. On June 4, 2004, Staff filed Comments regarding the revised Water Facilities
5 Agreement filed on May 24, 2004. In its Comments, Staff stated that it now recommends approval of
6 the May 24, 2004 Water Facilities Agreement and of Strawberry Water's request for extension of its
7 CC&N to the Hardscrabble Mesa subdivision.

8 22. The Hardscrabble Mesa area is a ranching community that currently has 10 water
9 meter connections to the Strawberry Water system. The last meter connection was installed
10 approximately five years ago. No significant growth in customers is expected in the area and the
11 HMHOA has agreed to limit future installations to a maximum of 10 additional residential meters
12 (Tr. 33, 40; Ex. S-1, at 1).

13 23. According to the Staff Report, Strawberry Water has 13 wells with a total production
14 capacity of 289 gallons per minute, 252,500 gallons of storage capacity, booster pumps, pressure
15 tanks, and a distribution system that currently serves approximately 983 customers. Staff anticipates
16 that the existing service area will have approximately 1,100 customers by 2007. The Hardscrabble
17 Mesa extension area is not expected to have any more than 9 additional customers during that period.
18 Staff Engineering found that the Company's existing production and storage capacity can serve up to
19 1,248 connections. Staff therefore concluded that Strawberry Water's system has adequate
20 production and storage capacity to serve the existing and proposed CC&N extension area within a
21 conventional five-year planning period without adding any new production (Ex. S-1, at 2).

22 24. Strawberry Water is not located in an Active Management Area ("AMA") and is not
23 subject to any AMA reporting and conservation rules. According to ADEQ, the Company is
24 currently delivering water that meets water quality standards under the Arizona Administrative Code.

25 25. Strawberry Water will continue to serve the Hardscrabble Mesa area under the
26 Company's tariffed rates and charges. The Company has no outstanding compliance issues pending
27 with the Commission. According to the Company's witness, all of the Brooke Utilities companies,
28 including Strawberry Water, currently meet the 10 parts per billion arsenic standard that will become

1 effective January 23, 2006 pursuant to rules promulgated by the United States Environmental
2 Protection Agency (December 10, 2002 Tr. 33).

3 26. Based on the information contained in the record, including the late-filed exhibits and
4 comments submitted in this docket, we conclude that the requested CC&N extension to include the
5 Hardscrabble Mesa area, as more fully described in Attachment A hereto, is in the public interest and
6 should be approved. Strawberry Water shall be required to charge Hardscrabble Mesa customers
7 under the Company's current tariffed rates.

8 CONCLUSIONS OF LAW

9 1. Strawberry Water is a public service corporation within the meaning of Article XV of
10 the Arizona Constitution and A.R.S. §§40-281, 40-282, and 40-285.

11 2. The Commission has jurisdiction over Strawberry Water and the subject matter of the
12 application.

13 3. Notice of the application was provided in accordance with law.

14 4. There is a public need and necessity for water utility service in the proposed extension
15 area.

16 5. Strawberry Water is a fit and proper entity to receive an extension of its water CC&N
17 for the proposed extension to the Hardscrabble Mesa area, as more fully described in Attachment A
18 hereto.

19 6. Staff's recommendation to approve the proposed CC&N extension area is reasonable
20 and shall be adopted.

21 ORDER

22 IT IS THEREFORE ORDERED that the application of Strawberry Water Co., Inc. for
23 authority to extend its CC&N to include the Hardscrabble Mesa area, as more fully described in
24 Attachment A hereto, is hereby granted.

25 IT IS FURTHER ORDERED that the Water Facilities Agreement filed on May 24, 2004
26 between Strawberry Water Co., Inc. and the Hardscrabble Mesa Homeowners Association shall be
27 approved.

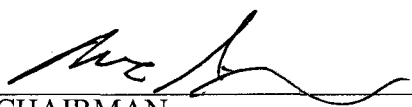

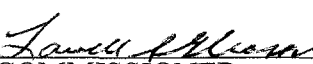
28 IT IS FURTHER ORDERED that Strawberry Water Co., Inc. shall, by December 31, 2004,

file a proposed Curtailment Tariff for approval by the Commission.

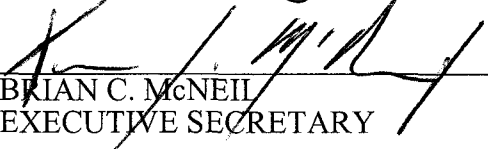
IT IS FURTHER ORDERED that the current rates and charges set forth in Strawberry Water Co., Inc.'s tariffs shall be applied to all customers in the CC&N extension area approved herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
COMMISSIONER	COMMISSIONER	

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 10th day of August, 2004.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

DDN:mj

1 SERVICE LIST FOR:

STRAWBERRY WATER COMPANY, INC.

2 DOCKET NO.:

W-03513A-01-0727

3 Robert Hardcastle
4 Brooke Utilities, Inc.
5 P.O. Box 82218
6 Bakersfield, CA 93380

7 Jay L. Shapiro
8 FENNEMORE CRAIG
9 3003 North Central Ave., Suite 26
10 Phoenix, AZ 85012-2913

11 Richard E. Henry
12 Hardscrabble Mesa Homeowners Association
13 1501 E. Granite Dells Rd.
14 Payson, AZ 85541

15 Christopher Kempley, Chief Counsel
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Ernest Johnson, Director
21 Utilities Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007

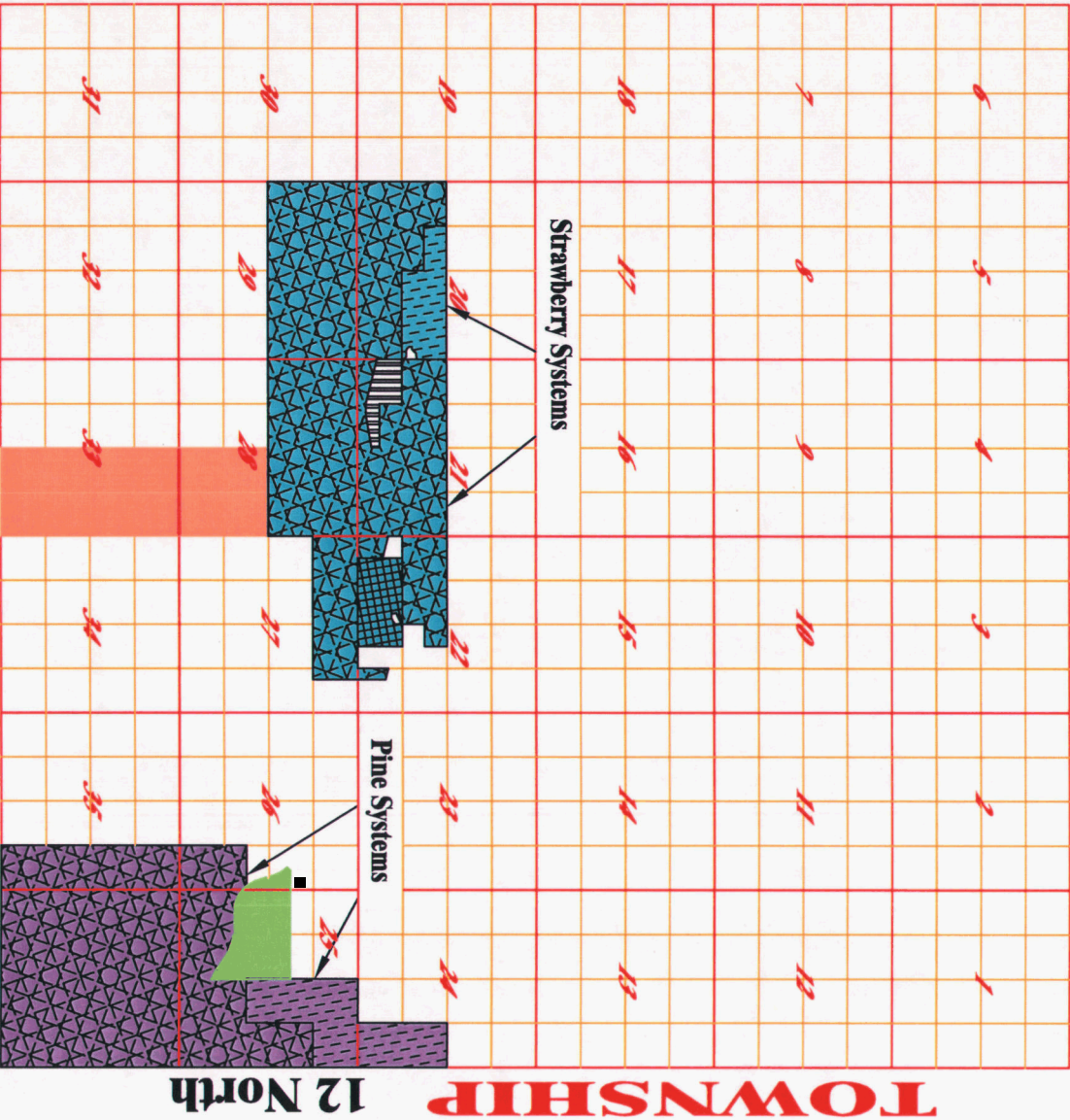
STRAWBERRY WATER COMPANY
DOCKET NO. W-3513-01-727
AMENDED LEGAL DESCRIPTION

The SE 1/4 of Section 28 and the E 1/2 of Section 33, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

The E 1/2 of Section 23 and the W 1/2 of Section 24, Township 11-1/2 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

COUNTY: Gila

RANGE 8 East



TOWNSHIP 12 North

Map No. 20



W-1576 (3)

E & R Water Company, Inc.



W-1407 (1)

Strawberry Water Company



W-1993 (12)(1)

United Utilities (Strawberry)



W-2137 (2)

Williamson Waterworks, Inc.



Pine Creek Canyon Domestic Water Improvement District (Nonjurisdictional)



E & R Water Company, Inc.
United Utilities, Inc.

Williamson Waterworks, Inc.

Application to Transfer to

Strawberry Water Company, Inc.

Docket No. W-3513-98-080



E & R Water Company, Inc.
Williamson Waterworks, Inc.

Application to Transfer to

Pine Water Company, Inc.

Docket No. W-3512-98-079



Strawberry Water Company, Inc.

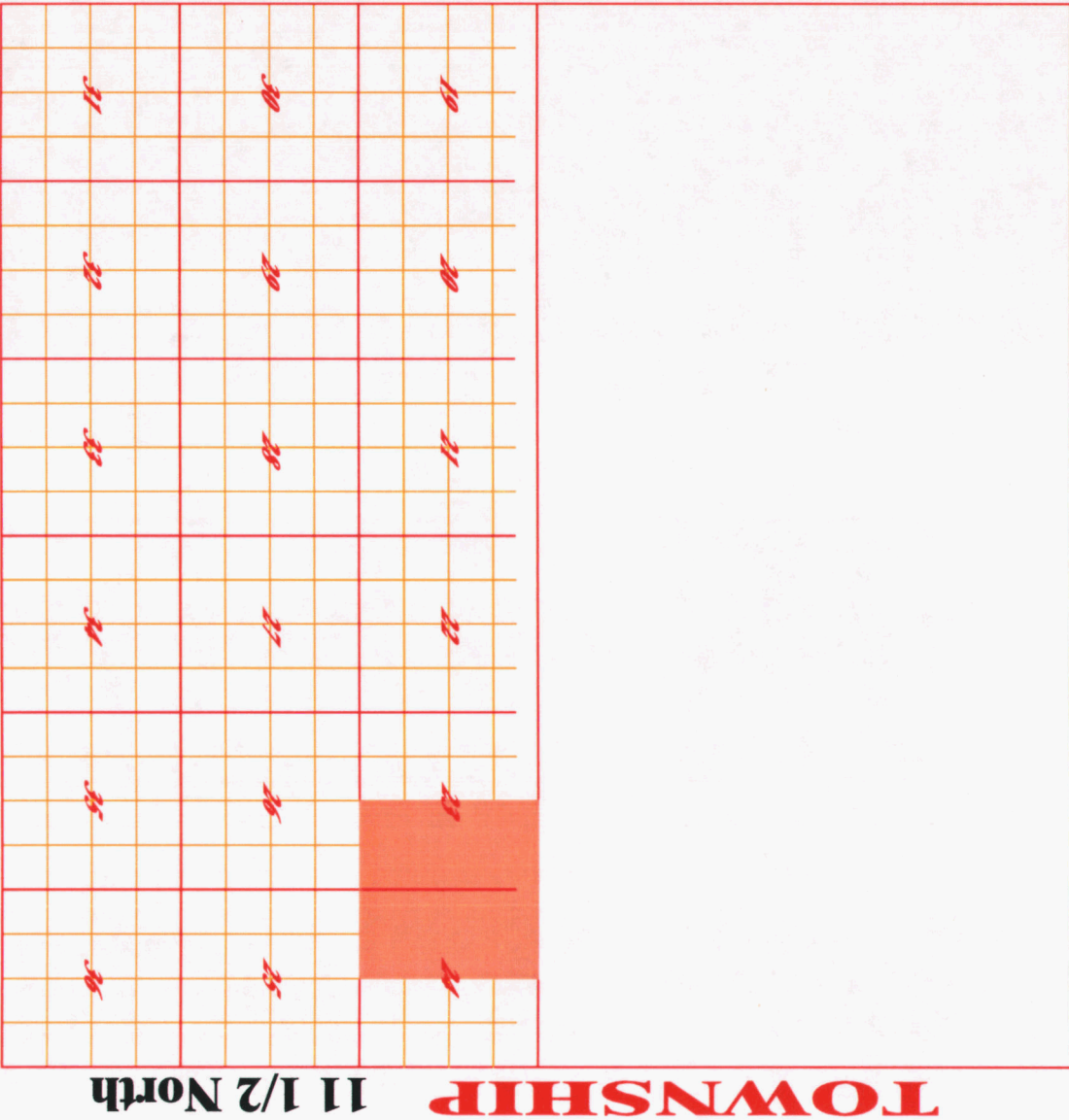
W-3513-01-727

Application for Extension

DECISION NO. 67167

COUNTY: *Gila*

RANGE 8 East



Map No. 29

Strawberry Water Company, Inc.
W-3513-01-727
Application for Extension

DECISION NO. 67167